



PATENT

Customer No. 22,852

Attorney Docket No. 05725.0784-00000

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

Roland BAZIN et al.

Application No.: 09/725,049

Filed: November 29, 2000

For: PROCESS FOR DIAGNOSING
CONDITIONS OF EXTERNAL BODY
PORTIONS AND FEATURES OF
PRODUCTS APPLIED THERETO

)
)
) Group Art Unit: 3743
)
)

) Examiner: Kathryn P. ODLAND
)
)

) Confirmation No.: 8607
)
)

Mail Stop Appeal Brief--Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

This is an appeal to the Board of Patent Appeals and Interferences ("the Board") from the final Office Action dated December 14, 2004 ("Final Office Action"), finally rejecting claims 1, 2, 4-6, 28, 29, 32-58 and 61-67, in the above-referenced patent application. Pursuant to 37 C.F.R. § 41.37, Appellant submits one copy of this Appeal Brief (37 C.F.R. § 41.37(a)(1)) accompanied by payment of the fee (\$500.00) set forth in 37 C.F.R. § 41.20(b)(2).

A Notice of Appeal was filed on March 14, 2005, and, with the period for filing the Appeal Brief extending to Monday, August 15, 2005, by a Petition for a three-month extension of time and fee payment filed concurrently herewith, this Appeal Brief is being timely filed under 37 C.F.R. § 41.37.

TABLE OF CONTENTS

	<u>Page No.</u>
I. Real Party in Interest	2
II. Related Appeals and Interferences.....	3
III. Status of Claims.....	4
IV. Status of Amendments.....	5
V. Summary of Claimed Subject Matter	6
A. Claims 1, 2, 4-6, 28, 29, 32-34, 50, 58 and 62	6
B. Claims 35-38.....	7
C. Claims 39-41, 54-57, 61, and 63-67	8
D. Claims 42-49.....	11
E. Claims 51-53.....	12
VI. Ground of Rejection to be Reviewed on Appeal	14
VII. Argument	15
A. Requirements for 35 U.S.C. § 103 <i>prima facie</i> obviousness.....	16
B. Rejection of claims 1, 2, 4-6, 28, 29, 32-58, and 61-67 under 35 U.S.C. § 103(a) based on Kvedar, Diepgen, Rose, and La Rosa should be reversed because the Examiner has failed to establish a <i>prima facie</i> case of obviousness	18
1. Disclosure of Kvedar, Diepgen, Rose and La Rosa	18
2. The rejection based on Kvedar, Diepgen, Rose, and La Rosa does not set forth a <i>prima facie</i> case of obviousness.....	19
C. Conclusion	23
VIII. Claims Appendix.....	25
IX. Evidence Appendix	55
X. Related Proceedings Appendix.....	56

I. **Real Party in Interest**

The real party in interest is L'Oréal S.A., the assignee of the entire right, title, and interest in the application.

II. Related Appeals and Interferences

In U.S. Application No. 09/725,048 (attorney docket No. 05725.0800-00000), a Notice of Appeal was filed on January 28, 2005, and an Appeal Brief was filed on June 20, 2005. The appeal in U.S. Application No. 09/725,048 may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal. Appellant, Appellant's legal representatives, and assignee are aware of no other appeals, interferences, or judicial proceedings that may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

III. Status of Claims

Claims 1-59 and 61-67 are pending in this application. Claims 3, 7-27, 30, 31 and 59 were withdrawn from consideration by the Examiner. Claims 1, 2, 4-6, 28, 29, 32-58 and 61-67, as set forth in the Claims Appendix, were finally rejected in the Final Office Action and the rejections applied to those claims are at issue in this appeal.

IV. Status of Amendments

No amendments under 37 C.F.R. § 1.116 have been filed subsequent or in response to the Final Office Action.

V. Summary of Claimed Subject Matter

A. Claims 1, 2, 4-6, 28, 29, 32-34, 50, 58 and 62

The subject matter set forth in claim 1 relates to a process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion. Page 3, lines 16-18.¹ The process comprises obtaining, with an optical image scanner configured in the form of a scanner for scanning documents, scanned image data relating to at least one characteristic of a non-dermatoglyphic external portion of an individual, and/or at least one product applied to the external portion. Fig. 2; page 3, lines 18-21; page 14, lines 13-16. The process further comprises analyzing, based on the image data, the at least one characteristic, and determining a diagnosis of at least one condition of the external portion, and/or at least one feature of the product applied to the external portion. Page 3, line 22 - page 4, line 2; page 23, line 22 - page 24, line 3. Obtaining the scanned image data includes placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data. Figs. 2-6; page 5, lines 8-15; page 16, lines 3-15.

¹ The references to the specification and drawings in this Brief are merely intended to facilitate explaining how the originally-filed application provides exemplary disclosure relating to the claimed subject matter. Those references are not necessarily exhaustive. Furthermore, those references should not be construed as limiting the claims.

In one aspect of the process, as set forth in claim 4, obtaining of the scanned image data can include placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data. Page 5, lines 8-15; page 16, lines 3-15.

As set forth in claims 32 and 34, in another aspect of the process, the image scanner may be associated with a first computer located at a first location, and the process may further comprise transferring the scanned image data from the first computer to a second computer located at a second location remote from the first location. Fig. 1; page 8, lines 1-4. In addition, the method may also comprise storing the scanned image data on a data storage medium and shipping the data storage medium to the second location. Page 8, lines 4-6.

B. Claims 35-38

The subject matter set forth in claims 35-38 relates to a process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion. Page 3, lines 16-18. The process comprises obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of a non-dermatoglyphic external portion of an individual, and/or at least one product applied to the external portion. Page 3, lines 18-21; page 14, lines 13-14. The process further comprises analyzing, based on the image data, the at least one characteristic, and determining a diagnosis of at least one condition of the external portion, and/or at least one feature of the product applied to the external portion. Page 3, line 22 - page 4, line 2; page 23, line 22 - page 24, line 3. The image scanner is associated with a first computer located at a

first location. Fig. 1; page 8, lines 1-4. The process also comprises transferring the scanned image data from the first computer to a second computer located at a second location remote from the first location. Fig. 1; page 8, lines 1-4.

The subject matter of claim 35 also comprises transferring questionnaire answers from the first location to the second location, at least some of the questionnaire answers being related to at least one of the condition of the external portion and the product applied to the external portion. Page 25, lines 10-15.

The subject matter of claim 36 also comprises sending to the second location at least one of billing information and payment information. Page 8, lines 9-10; Page 25, lines 14-15.

The subject matter of claims 37 and 38 also comprises displaying an image corresponding to the scanned image data, the displayed image including representations of the at least one characteristic. Page 25, lines 18-21. The analyzing includes viewing the displayed image. Page 25, line 23. The obtaining of the scanned image data includes placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data. Figs. 2-6; page 5, lines 8-15; page 16, lines 3-15.

C. Claims 39-41, 54-57, 61, and 63-67

The subject matter set forth in claims 39-41, 54-57, 61, and 63-67 relates to a process for diagnosing, based on scanned information, one or more conditions of an

external body portion and/or one or more features of at least one product applied to the external body portion. Page 3, lines 16-18. The process comprises obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of a non-dermatoglyphic external portion of an individual, and/or at least one product applied to the external portion. Page 3, lines 18-21; page 14, lines 13-14. The process further comprises analyzing, based on the image data, the at least one characteristic, and determining a diagnosis of at least one condition of the external portion, and/or at least one feature of the product applied to the external portion. Page 3, line 22 - page 4, line 2; page 23, line 22 - page 24, line 3. Obtaining of scanned image data includes placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data. Figs. 2-6; page 5, lines 8-15; page 16, lines 3-15.

The subject matter of claim 39 also includes at least one of the analyzing and the determining being at least partially performed manually. Page 8, lines 14-16; page 26, lines 2-20.

The subject matter of claim 40 also includes at least one of the analyzing and the determining being at least partially performed by a computer. Page 26, lines 2-20.

The subject matter of claim 41 further comprises sending the scanned image data to a plurality of locations so that the at least one characteristic may be analyzed numerous times. Page 8, lines 17-19; page 28, lines 18-23.

The subject matter of claim 54 further comprises collecting information relating to at least one of the scanned external portion and the product to form a database for use in at least one of diagnoses, treatment recommendation determinations, product evaluations, and product formulations. Page 28, lines 6-17.

The subject matter of claim 55 also includes the analyzing further comprising comparing an image formed from the scanned image data to at least one image formed from image data stored in an image database. Page 28, lines 6-17.

The subject matter of claim 56 further comprises providing the diagnosis to at least one of the individual and the treatment provider. Page 26, lines 12-14.

The subject matter of claim 61 also includes the obtaining of the scanned information including scanning, with the image scanner, a calibration member having one of a predetermined size and a predetermined color. Page 10, lines 11-13; page 23, lines 17-21.

The subject matter of claim 63 further comprises analyzing the external portion with analysis equipment. Page 24, lines 14-18. In one aspect of the process as set forth in claim 64, the analysis equipment may be chosen from one of a comeometer, a dermal torque meter, and image analyzer, a pH meter, and a device for measuring hydration of the skin. Page 24, lines 18-20.

The subject matter of claim 65 further comprises analyzing the external portion, wherein the analyzing of the external portion is performed by a trained person. Page 24, lines 16-22.

The subject matter of claim 66 further comprises providing a grade indicative of at least one of the condition of the external portion and performance of the product.

Page 10, lines 21-23. In one aspect of the process as set forth in claim 67, the process further comprises storing information relating to the grade in a database. Page 10, lines 21-23.

D. Claims 42-49

The subject matter set forth in claim 42 relates to a process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion. Page 3, lines 16-18. The process comprises obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of a non-dermatoglyphic external portion of an individual, and/or at least one product applied to the external portion. Page 3, lines 18-21; page 14, lines 13-14. The process further comprises analyzing, based on the image data, the at least one characteristic, and determining a diagnosis of at least one condition of the external portion, and/or at least one feature of the product applied to the external portion. Page 3, line 22 - page 4, line 2; page 23, line 22 - page 24, line 3. The process also comprises determining a recommendation of at least one treatment for the at least one diagnosed condition of the external portion, and providing the treatment recommendation so that the external portion of the individual may be treated according to the recommendation. Page 8, line 20 - page 9, line 2; page 26, lines 14-19. Obtaining the scanned image data includes placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with

the scanner to obtain the scanned image data. Figs. 2-6; page 5, lines 8-15; page 16, lines 3-15.

In one aspect of the process, as set forth in claim 49, a computer at least partially performs the determining of the treatment recommendation, the computer being located at a location remote from that of the image scanner. Fig. 1; Page 26, line 19 - page 27, line 2.

E. Claims 51-53

The subject matter set forth in claims 51-53 relates to a process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion. Page 3, lines 16-18. The process comprises obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of a non-dermatoglyphic external portion of an individual, and/or at least one product applied to the external portion. Page 3, lines 18-21; page 14, lines 13-14. The process further comprises analyzing, based on the image data, the at least one characteristic, and determining a diagnosis of at least one condition of the external portion, and/or at least one feature of the product applied to the external portion. Page 3, line 22 - page 4, line 2; page 23, line 22 - page 24, line 3. The process also comprises monitoring the status of the external portion during treatment for the diagnosed condition of the external portion. Page 27, lines 16-18. Obtaining the scanned image data includes placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or placing a transfer member in contact with the external portion of the individual to provide

an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data. Figs. 2-6; page 5, lines 8-15; page 16, lines 3-15.

The subject matter of claim 51 further comprises providing a recommendation for an additional treatment based on the monitored status. Page 27, lines 20-21.

The subject matter of claim 52 further comprises providing the individual with information regarding the effectiveness of the treatment. Page 28, lines 1-2.

In the subject matter of claim 53, the monitoring includes repeating at least the obtaining and the analyzing. Page 28, lines 3-5.

VI. Ground of Rejection to be Reviewed on Appeal

Claims 1, 2, 4-6, 28, 29, 32-58, and 61-67 stand rejected under 35 U.S.C.

§ 103(a) over Joseph C. Kvedar et al., Teledermatology in a Capitalized Delivery System Using Distributed Information Architecture: Design and Development, 5 TELEMEDICINE J. 357-366 (1999) ("Kvedar"), Thomas L. Diepgen et al., Digital Images in Dermatology and the Dermatology Online Atlas on the World-Wide-Web, 25 J. DERMATOL., 782-787 (1998) ("Diepgen"), Forrest Rose, MU Unveils Pilot Program for Distance Plant Diagnosis, Dec. 15, 1998, ("Rose"), and Francisco G. La Rosa, High Resolution and Low Cost Static Telepathology, (2000), ("La Rosa").

VII. Argument

As a preliminary matter, in the § 103(a) rejection, the Examiner makes several unsupported conclusory allegations regarding the Examiner's hypothetical combinations of references. Such "broad conclusory statements standing alone are not 'evidence'." In re Kotzab, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000). As discussed more fully below, the unsupported, conclusory allegations in the Final Office Action fail to support any *prima facie* case of obviousness.

Additionally, the claim rejection is not clearly stated. For example, the Examiner has failed to indicate whether or not she has modified Kvedar in view of Diepgen, Rose and/or La Rosa, or whether she has cited the additional articles as alleged "extrinsic evidence" related to purported judicial notice by the Examiner. The Examiner vaguely alleges that the claims are upatentable over Kvedar "and further as evidenced (extrinsic evidenced)[sic] by" Diepgen, Rose and La Rosa without providing any clear explanation of her reliance on the references other than Kvedar. Final Office Action at 5. To show one of many examples, the Examiner alleges:

[I]t would be an obvious alternative to use a scanner for scanning documents in addition to or in alternative to a digital camera. The imaging technique and technologies are quite similar between digital cameras and flatbed scanners. Articles have been provided as evidence that diagnosis can be used with [sic] a flatbed scanner and proof to show the similarities between flatbed scanner [sic] and digital cameras....

Final Office Action at 6. The Examiner seems to rely on her personal unsupported musings as an alleged basis for the claim rejections without describing how or if the references have been applied. In so doing, the Examiner failed to clearly set forth the ground of rejection as required by the M.P.E.P. See M.P.E.P. 706.02(j).

A. Requirements for 35 U.S.C. § 103 *prima facie* obviousness

Several basic factual inquiries must be made in order to determine the obviousness or non-obviousness of claims of a patent application under 35 U.S.C. § 103. These factual inquiries, set forth in Graham v. John Deere Co., 383 U.S. 1, 17 (1966), require the Examiner to:

- (1) Determine the scope and content of the prior art;
- (2) Ascertain the differences between the prior art and the claims in issue;
- (3) Resolve the level of ordinary skill in the pertinent art; and
- (4) Evaluate evidence of secondary considerations.

The obviousness or nonobviousness of the claimed invention is then evaluated in view of the results of these inquiries. Id. at 17-18. In making this evaluation, the references must be considered as a whole, and must suggest the desirability and thus the obviousness of making the combination. See M.P.E.P. § 2141. The references must also be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention. Id. Additionally, a reasonable expectation of success is the standard with which obviousness is determined. Id. Furthermore, the Examiner bears the initial burden of factually supporting a determination of obviousness in the rejection of the claimed invention. See M.P.E.P. § 2142.

Thus, in order to carry the initial burden of establishing a *prima facie* case of obviousness that satisfies the Graham standard, the Examiner must satisfy three basic criteria. First, the prior art references when combined must teach or suggest all the claim elements. Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in

the art, to modify the reference or to combine reference teachings. Finally, there must be a reasonable expectation of success. See M.P.E.P. § 2143.

Further, the Federal Circuit has emphasized the high burden for establishing a *prima facie* case of obviousness and the requirement for specificity in the evidence necessary to support a *prima facie* case. For example, in In re Kotzab, the Federal Circuit held that "[e]ven where obviousness is based on a single prior art reference teaching all of the individual elements of the claims, there must be a showing of a suggestion or motivation to modify the teachings of that reference." 217 F.3d at 1370, 55 U.S.P.Q.2d at 1317. Whether this showing is based on an implicit or express showing in the reference, the Examiner "must provide particular findings related thereto." Id. (citing In re Dembiczak, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999) (requiring a "clear and particular" suggestion to combine or modify prior art references). References that teach away from a combination may not be used to establish obviousness. Tec Air, Inc. v. Denso Mfg. Michigan, Inc., 192 F.3d 1353, 1360, 52 U.S.P.Q.2d 1295, 1298 (Fed. Cir. 1999). In re Kotzab also reiterates the proposition that "broad conclusory statements standing alone are not 'evidence'." 217 F.3d at 1370, 55 U.S.P.Q.2d at 1317.

Additionally, in In re Lee, the Federal Circuit held that "[t]he factual inquiry whether to combine references must be thorough and searching. It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions, and cannot be dispensed with." 277 F.3d 1338, 1342, 61 U.S.P.Q.2d 1430, 1433 (Fed. Cir. 2002). Further, it is "never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a

rejection is based." See M.P.E.P. § 2144.03.E; See In re Zurko, 258 F.3d 1379, 1386, 59 U.S.P.Q.2d 1693, 1697 (Fed. Cir. 2001); In re Ahlert, 424 F.2d 1088, 1092, 165 U.S.P.Q. 418, 421 (C.C.P.A. 1970).

Also, simply because references can be modified or combined is not sufficient basis to establish a *prima facie* case of obvious. In re Mills, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990); M.P.E.P. § 2143.01. And even if the claimed limitations are within the capabilities of one skilled in the art, such capabilities, by themselves, are not sufficient to establish a *prima facie* case of obviousness. In re Kotzab, 217 F.3d at 1370, 55 U.S.P.Q.2d at 1318; M.P.E.P. § 2143.01.

For the reasons set forth below, the Examiner has failed to meet the burden of establishing a *prima facie* case of obviousness in the § 103 rejection.

- B. Rejection of claims 1, 2, 4-6, 28, 29, 32-58, and 61-67 under 35 U.S.C. § 103(a) based on Kvedar, Diepgen, Rose, and La Rosa should be reversed because the Examiner has failed to establish a *prima facie* case of obviousness**

1. Disclosure of Kvedar, Diepgen, Rose and La Rosa

Kvedar discloses a teledermatology process involving the use of a digital camera, i.e., a Nikon E2N, to create digital photograph images of patients. Kvedar at 359. The images, along with patient data, are stored on a Web server. A dermatologist downloads the information and is able to provide a diagnosis and treatment recommendation.

Diepgen discloses a database of digital images of known dermatological conditions. To capture digital images that may be stored in the database, Diepgen discloses the following techniques: using a digital still camera or video camera, digitizing existing photographs, digitizing slides with a scanner, or using a photo CD.

Rose discloses a program for distance plant diagnosis that involves submitting a digital image of a plant to a lab. Although Rose mentions using a scanner for images, Rose states that digital cameras have a "big advantage" because they can be taken to a remote location and used for large objects.

La Rosa discloses telepathology involving the use of a scanner to scan histological slides, but that reference has no indication of how such slides are prepared prior to scanning.

2. The rejection based on Kvedar, Diepgen, Rose, and La Rosa does not set forth a *prima facie* case of obviousness

As discussed above, in order to carry the initial burden of establishing a *prima facie* case of obviousness under 35 U.S.C. § 103(a), the prior art references when combined must teach or suggest all the claim elements. See M.P.E.P. § 2143.

Each of the independent claims (claims 1, 35-37, 39-42, 51-56, 61, 63, 65, and 66) rejected under § 103(a) recites a method involving use of an "optical image scanner."

In the Final Office Action, the Examiner cited Kvedar for the asserted disclosure of a process for diagnosing by obtaining an optical image. Final Office Action at 5. The Examiner acknowledged that Kvedar discloses using a digital camera "to obtain digital images" rather than having any disclosure of an optical image scanner as recited in the claims. Id. at 5-6. Notwithstanding that acknowledged deficiency, the Examiner alleges that "it would be an obvious alternative to use a scanner for scanning documents in addition or in alternative to a digital camera," and that "[t]he imaging technique and technologies are quite similar between digital cameras and flatbed scanners." Id. at 6.

The Examiner apparently cited Diepgen, Rose, and La Rosa "as [alleged] evidence that diagnosis can be used with a flatbed scanner and [purported] proof to show the similarities between flatbed scanner and digital cameras as well as the [alleged] obviousness one would have to employ one or both depending on the information to be captured." Id.

Kvedar discloses capturing images using a Nikon E2N digital photography camera. Kvedar at 359. Nothing in Kvedar provides any teaching or suggestion of a process involving the use of "an optical image scanner," as recited in independent claims 1, 35-37, 39-42, 51-56, 61, 63, 65, and 66, which were rejected in the § 103 rejection.

Even though the Examiner acknowledges that Kvedar lacks any teaching of using an optical image scanner, she apparently cites "articles" in an attempt to support several of her assertions including her assertion that "diagnosis can be used with a flatbed scanner." Final Office Action at 4 (Emphasis added). Such assertions highlight the fact that the Examiner has not set forth a *prima facie* showing of obviousness in the Final Office Action. The mere alleged capability of diagnosis being "used with a flatbed scanner," as asserted by the Examiner, is insufficient to establish a *prima facie* case of obviousness. Simply because references can be modified or combined is not a sufficient basis to establish a *prima facie* obviousness. In re Mills, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990); M.P.E.P. § 2143.01. Accordingly, the Examiner's assertion of mere capability is insufficient to support the § 103 claim rejection.

Furthermore, contrary to the Examiner's apparent allegation, Diepgen, Rose, and La Rosa do not provide any teaching that would have supplied any suggestion or

motivation to have modified Kvedar as proposed in the Office Action. Diepgen mentions "digitizing color positives (Flatbed Scanner)." Diepgen at 4. Such disclosure appears to be related to the use of a flatbed scanner to scan conventional color photographs (i.e., placing a color photograph on a window of a flatbed scanner and scanning the photograph). Nothing in that reference provides any teaching of substituting a scanner in place of a digital camera. In addition, that reference does not have any teaching or suggestion of "scanning [an] external body portion with [an] image scanner" and/or "scanning [an] image on [a] transfer member" that has been provided by "placing [the] transfer member in contact with [an] external body portion," as recited in claims 1, 36, 37, 39-42, 51-56, 61, 63, 65, and 66.

Rose and La Rosa also do not provide any suggestion or motivation to modify Kvedar or any teaching of the above-noted subject matter recited in the claims. Rather than relating to the field of diagnosing one or more conditions of an external body portion and/or one or more features of at least one product applied to a body portion, Rose relates to the non-analogous art of identifying insects and plants such as weeds. Further, contrary to providing any suggestion to substitute a scanner in place of a digital camera, as apparently proposed by the Examiner, Rose in its concluding paragraph touts the "big advantage" of using a digital camera in place of a scanner because a digital camera is portable and also able to accommodate large mushrooms. Thus, Rose teaches away from the Examiner's hypothetical proposal to substitute a scanner in place of the digital camera disclosed in Kvedar.

Turning briefly to La Rosa, even though that reference mentions a pathological technique involving a scanner used to scan histological glass slides, nothing in that

reference provides any teaching of substituting a scanner in place of the digital camera disclosed in Kvedar. There is also no disclosure or suggestion of "scanning [an] external body portion with [an] image scanner" and/or "scanning [an] image on [a] transfer member" that has been provided by "placing [the] transfer member in contact with [an] external body portion," as recited in claims 1, 36, 37, 39-42, 51-56, 61, 63, 65, and 66. For example, since there is nothing more than a general mention of La Rosa's histological glass slides, there is no teaching of placing those slides in contact with an external body portion.

In addition to the above-noted deficiencies, the Examiner has not cited a reference or any other source in an attempt to support the allegations relating to the rejections applied to several claims. For example, the Examiner fails to cite any reference or source which discloses or suggests at least, "storing the scanned image data on a data storage medium, wherein the transferring includes shipping the data storage medium to the second location," as recited in claim 34; "sending to the second location at least one of billing information and payment information," as recited in claim 36; "wherein a computer at least partially performs at least one of the analyzing and the determining," as recited in claim 40; "providing a recommendation for an additional treatment based on the monitored status," as recited in claim 51; "providing the individual with information regarding the effectiveness of the treatment," as recited in claim 52; "wherein the monitoring includes repeating at least the obtaining and the analyzing," as recited in claim 53; "wherein the obtaining of the scanned information includes scanning, with the image scanner, a calibration member having one of a predetermined size and a predetermined color," as recited in claim 61; analyzing the

external portion with analysis equipment "chosen from one of a corneometer, a dermal torque meter, and image analyzer, a pH meter, and a device for measuring hydration of the skin," as recited in claim 64; or "providing a grade indicative of at least one of the condition of the external portion and performance of the product," as recited in claim 66.

"Broad conclusory statements standing alone are not 'evidence'." In re Kotzab, 217 F.3d at 1370, 55 U.S.P.Q.2d at 1317. It is "never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection is based." See M.P.E.P. § 2144.03.E; See In re Zurko, 258 F.3d at 1386, 59 U.S.P.Q.2d at 1697. Accordingly, the Examiner failed to establish *prima facie* obviousness where no evidentiary support was offered for the record.

For all of the reasons explained above, the Section 103(a) rejection should be reversed.

Dependent claims 2, 4-6, 28, 29, 32-34, 38, 43-50, 57, 58, 62, 64 and 67 each depend from one of independent claims 1, 37, 42, 56, 63 and 66, and therefore, include all the respective recitations of the independent claim from which they depend. As discussed above, the Examiner failed to establish a *prima facie* case of obviousness for each of the independent claims. Because the independent claims are allowable, each of the dependent claims is allowable at least due to its dependency from an allowable independent claim. As such, the § 103(a) rejection of dependent claims 2, 4-6, 28, 29, 32-34, 38, 43-50, 57, 58, 62, 64 and 67 should be reversed.

C. Conclusion

For the reasons given above, pending claims 1, 2, 4-6, 28, 29, 32-58 and 61-67 are patentable over the cited references. The Board is therefore respectfully requested

to reverse the outstanding rejection under 35 U.S.C. § 103(a), so that at least claims 1, 2, 4-6, 28, 29, 32-58 and 61-67 may be allowed.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested. If there are any fees due which are not enclosed herewith, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: August 15, 2005

By: 

F. Chad Copier
Reg. No. 54,047

Finnegan, Henderson, Farabow,
Garrett & Dunner, L.L.P.
Customer No. 22,852

VIII. Claims Appendix

1. A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner configured in the form of a scanner for scanning documents, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic; and

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion,

wherein the obtaining of the scanned image data includes

placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or

placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data.

2. The process of claim 1, wherein the characteristic of the external portion includes at least one of wrinkles, crows eyes, blood vessel networks visible through the skin, skin pores, cosmetic materials applied to an external body portion, viewable features of hair strands including roots, viewable features of skin including pigmentations and groups of skin cells, viewable features of fingernails and toe nails, and exteriorly viewable features of teeth.

3. (Withdrawn) The process of claim 1, wherein the characteristic of the product includes at least one of non-transferability, product coverage, brilliancy, coloring, greasiness, interactions between the skin and the product, product thickness, and product amount.

4. The process of claim 1, wherein the obtaining of the scanned image data includes placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data.

5. The process of claim 4, wherein the external portion of the individual is placed into contact with the scanning region of the scanner.

6. The process of claim 5, wherein the scanner is a flat bed scanner and wherein the external portion of the individual is moved into contact with the scanning region.

7. (Withdrawn) The process of claim 5, wherein the scanner is a hand-held scanner and wherein the scanner is moved into contact with the external portion of the individual.

8. (Withdrawn) A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic; and

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion,

wherein the obtaining of the scanned image data includes placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and

wherein the process further comprises placing liquid between the external body portion and the scanning region, the liquid altering the index of refraction to improve viewing of the at least one characteristic.

9. (Withdrawn) A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual; and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic; and

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion,

wherein the obtaining of the scanned image data includes placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and

wherein the process further comprises placing at least one of a dye and a pigment on the external portion to improve viewing of the at least one characteristic.

10. (Withdrawn) The process of claim 4, wherein the obtaining of the scanned image data further includes placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and wherein the scanning further includes scanning the image of the transfer member with the scanner.

11. (Withdrawn) The process of claim 10, wherein the scanning of the external portion and the scanning of the image of the transfer member occur one of simultaneously and one after another.

12. (Withdrawn) A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic; and

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion,

wherein the obtaining of the scanned image data includes placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data.

13. (Withdrawn) The process of claim 12, wherein the transfer member includes adhesive material provided on a backing, the adhesive material of the transfer member being placed in contact with skin and the transfer member being removed from the skin to transfer cells from the skin of the individual to the transfer member.

14. (Withdrawn) The process of claim 13, wherein the analyzing includes evaluating the amount of cells transferred to the transfer member and wherein the diagnosed condition is the dryness of the skin.

15. (Withdrawn) The process of claim 13, further comprising placing the adhesive material of the transfer member in contact with adhesive material of a second transfer member and separating the transfer members to transfer a portion of the skin cells to the second transfer member.

16. (Withdrawn) The process of claim 12, wherein the transfer member is placed in contact with an external body portion including a cosmetic product applied thereto, and wherein an image formed from the scanned image data is representative of at least one characteristic of the cosmetic product.

17. (Withdrawn) The process of claim 16, wherein the external portion includes lips and wherein the cosmetic product is one of a lip care product and a lip makeup product.

18. (Withdrawn) The process of claim 16, wherein the external portion includes skin and wherein the cosmetic product is foundation makeup.

19. (Withdrawn) The process of claim 18, wherein the transfer member is formed of fabric.

20. (Withdrawn) The process of claim 19, wherein the transfer member is an article of clothing.

21. (Withdrawn) The process of claim 12, wherein the transfer member is a sheet of material, and wherein the process includes placing the sheet of material in contact with lips of the individual and transferring a lip product from the lips to the sheet of material.

22. (Withdrawn) The process of claim 21, wherein the lip product is lipstick, the diagnosed feature being the non-retention of lipstick on the lips.

23. (Withdrawn) The process of claim 12, wherein the transfer member is a moldable material, and wherein the process includes placing the moldable material in contact with the skin of the individual to produce, on the moldable material, the surface profile of the skin.

24. (Withdrawn) The process of claim 12, wherein the transfer member is a window, the window being a portion of the image scanner defining a scanning region.

25. (Withdrawn) The process of claim 12, wherein the transfer member is one of a hair comb and a hair brush, wherein the placing of the transfer member in contact with the external body portion includes passing said one of the hair comb and the hair brush through hair, and wherein the image on the transfer member includes at least one of strands of hair and skin cells.

26. (Withdrawn) The process of claim 12, wherein the image on the transfer member indicates a condition of the external portion.

27. (Withdrawn) The process of claim 12, wherein the transfer member is configured to change color in response to a condition of the external portion.

28. The process of claim 1, wherein the external portion includes at least one of the skin of the individual, at least one strand of hair of the individual, at least one fingernail of the individual, at least one toe nail of the individual, and at least one tooth of the individual.

29. The process of claim 28, wherein the external portion includes the skin of the individual, and wherein the external portion is located on one of the hand, foot, arm, leg, torso, and face of the individual.

30. (Withdrawn) A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic; and

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion,

wherein the external portion includes at least the skin of the individual, and

wherein the external portion is located on the lips of the individual.

31. (Withdrawn) A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic; and

determining a diagnosis of

at least one condition of the external portion, and/or
at least one feature of the product applied to the external portion,
wherein the external portion includes at least one strand of hair of the individual,
and wherein said at least one strand of hair is one of a strand of hair from the scalp of
the individual, an eyelash of the individual, and an eyebrow hair of the individual.

32. The process of claim 1, wherein the image scanner is associated with a first
computer located at a first location, and wherein the process further comprises
transferring the scanned image data from the first computer to a second computer
located at a second location remote from the first location.

33. The process of claim 32, wherein the transferring includes transmitting the
scanned image data via the Internet.

34. The process of claim 32, further comprising storing the scanned image data
on a data storage medium, wherein the transferring includes shipping the data storage
medium to the second location.

35. A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic; and

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion,

wherein the image scanner is associated with a first computer located at a first location,

wherein the process further comprises transferring the scanned image data from the first computer to a second computer located at a second location remote from the first location, and

wherein the process further comprises transferring questionnaire answers from the first location to the second location, at least some of the questionnaire answers being related to at least one of the condition of the external portion and the product applied to the external portion.

36. A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic; and

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion,

wherein the image scanner is associated with a first computer located at a first location,

wherein the process further comprises transferring the scanned image data from the first computer to a second computer located at a second location remote from the first location,

wherein the process further comprises sending to the second location at least one of billing information and payment information, and

wherein the obtaining of the scanned image data includes

placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or

placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data.

37. A process for diagnosing, based on scanned information; one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic; and

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion,

wherein the image scanner is associated with a first computer located at a first location,

wherein the process further comprises transferring the scanned image data from the first computer to a second computer located at a second location remote from the first location,

wherein the process further comprises displaying an image corresponding to the scanned image data, the displayed image including representations of the at least one characteristic,

wherein the analyzing includes viewing the displayed image, and

wherein the obtaining of the scanned image data includes

placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or

placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data.

38. The process of claim 37, wherein the image scanner is associated with a first computer at a first location, wherein the process further comprises transferring the scanned image data from the first computer to a second computer at a second location remote from the first location, and wherein the image is displayed at the second location.

39. A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic; and

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion,

wherein at least one of the analyzing and the determining is at least partially performed manually, and

wherein the obtaining of the scanned image data includes

placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or

placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data.

40. A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic; and

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion,
wherein a computer at least partially performs at least one of the analyzing and
the determining, and

wherein the obtaining of the scanned image data includes

placing the external portion of the individual in the vicinity of a scanning
region of the scanner, and scanning the external portion with the image scanner
to obtain the scanned image data, and/or

placing a transfer member in contact with the external portion of the
individual to provide an image on the transfer member, and scanning the image
of the transfer member with the scanner to obtain the scanned image data.

41. A process for diagnosing, based on scanned information, one or more
conditions of an external body portion and/or one or more features of at least one
product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least
one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic; and
determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion,

wherein the process further comprises sending the scanned image data to a plurality of locations so that the at least one characteristic may be analyzed numerous times, and

wherein the obtaining of the scanned image data includes

placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or

placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data.

42. A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic;

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion;

determining a recommendation of at least one treatment for said at least one diagnosed condition of the external portion; and

providing the treatment recommendation so that the external portion of the individual may be treated according to the recommendation,

wherein the obtaining of the scanned image data includes

placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or

placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data.

43. The process of claim 42, wherein the treatment recommendation is a recommendation regarding use of at least one of a cosmetic product and a dermatological product.

44. The process of claim 43, wherein said at least one of the cosmetic product and the dermatological product is one of a makeup product, a care product, a hair product, a skin product, and a sun exposure product.

45. The process of claim 43, wherein the treatment recommendation is a recommendation regarding application of said at least one of the cosmetic product and the dermatological product to the external portion.

46. The process of claim 43, further comprising providing product ordering information along with the treatment recommendation.

47. The process of claim 42, wherein the providing of the treatment recommendation includes providing the treatment recommendation to at least one of the individual and a treatment provider.

48. The process of claim 47, wherein the providing of the treatment recommendation includes transmitting said recommendation to said at least one of the individual and the treatment provider via the Internet.

49. The process of claim 42, wherein a computer at least partially performs the determining of the treatment recommendation, the computer being located at a location remote from that of the image scanner.

50. The process of claim 1, further comprising monitoring status of the external portion during treatment for the diagnosed condition of the external portion.

51. A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

- obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of
 - a non-dermatoglyphic external portion of an individual, and/or
 - at least one product applied to the external portion;
- analyzing, based on the image data, the at least one characteristic;
- determining a diagnosis of
 - at least one condition of the external portion, and/or
 - at least one feature of the product applied to the external portion;
- monitoring status of the external portion during treatment for the diagnosed condition of the external portion; and
- providing a recommendation for an additional treatment based on the monitored status,

wherein the obtaining of the scanned image data includes

- placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or
- placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data.

52. A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic;

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion;

monitoring status of the external portion during treatment for the diagnosed condition of the external portion; and

providing the individual with information regarding the effectiveness of the treatment,

wherein the obtaining of the scanned image data includes

placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or

placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data.

53. A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic;

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion; and

monitoring status of the external portion during treatment for the diagnosed condition of the external portion,

wherein the monitoring includes repeating at least the obtaining and the analyzing, and

wherein the obtaining of the scanned image data includes

placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or

placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data.

54. A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic;

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion; and

collecting information relating to at least one of the scanned external portion and the product to form a database for use in at least one of diagnoses, treatment recommendation determinations, product evaluations, and product formulations,

wherein the obtaining of the scanned image data includes

placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or

placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data.

55. A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic; and

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion,

wherein the analyzing further comprises comparing an image formed from the scanned image data to at least one image formed from image data stored in an image database, and

wherein the obtaining of the scanned image data includes

placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or

placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data.

56. A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic;

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion; and

providing the diagnosis to at least one of the individual and a treatment provider,

wherein the obtaining of the scanned image data includes

placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or

placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data.

57. The process of claim 56, wherein the providing of the diagnosis includes transmitting said diagnosis to said at least one of the individual and the treatment provider via the Internet.

58. The process of claim 1, wherein the scanned image data includes data regarding color of said at least one characteristic.

59. (Withdrawn) The process of claim 1, wherein the obtaining of the scanned image data includes at least one of emitting light from the scanner onto the external portion, and emitting light from the scanner onto a transfer member.

61. A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic; and

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion,

wherein the obtaining of the scanned information includes scanning, with the image scanner, a calibration member having one of a predetermined size and a predetermined color, and

wherein the obtaining of the scanned image data includes

placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or

placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data.

62. The process of claim 1, wherein the obtaining includes obtaining scanned image data relating to multiple scanned images.

63. A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic; and

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion,

wherein the process further comprises analyzing the external portion with analysis equipment, and

wherein the obtaining of the scanned image data includes

placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or

placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data.

64. The process of claim 63, wherein the analysis equipment is chosen from one of a comeometer, a dermal torque meter, an image analyzer, a pH meter, and a device for measuring hydration of the skin.

65. A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic;

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion; and

analyzing the external portion, wherein the analyzing of the external portion is performed by a trained person,

wherein the obtaining of the scanned image data includes

placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or

placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data.

66. A process for diagnosing, based on scanned information, one or more conditions of an external body portion and/or one or more features of at least one product applied to the external body portion, the process comprising:

obtaining, with an optical image scanner, scanned image data relating to at least one characteristic of

a non-dermatoglyphic external portion of an individual, and/or

at least one product applied to the external portion;

analyzing, based on the image data, the at least one characteristic;

determining a diagnosis of

at least one condition of the external portion, and/or

at least one feature of the product applied to the external portion; and

providing a grade indicative of at least one of the condition of the external portion and performance of the product,

wherein the obtaining of the scanned image data includes

placing the external portion of the individual in the vicinity of a scanning region of the scanner, and scanning the external portion with the image scanner to obtain the scanned image data, and/or

placing a transfer member in contact with the external portion of the individual to provide an image on the transfer member, and scanning the image of the transfer member with the scanner to obtain the scanned image data.

67. The process of claim 66, further comprising storing information relating to the grade in a database.

IX. Evidence Appendix

None

X. Related Proceedings Appendix

None